IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No. 295 of 2000.

Date of decision: 21.8.2007.

State of H.P. ….. **Appellant.**

Vs.

Bhandaru Ram & anr. …. **Accused- respondents.**

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the Appellant : **Mr. M.L.Chauhan, Addl. Advocate General.**

For the Respondents : **Mr. Vikram Thakur, Advocate vice Mr. Shrawan Dogra, Advocate.**

Kuldip Singh, Judge (Oral).

The State has filed this appeal against the acquittal of respondents- accused by learned Chief Judicial Magistrate on 4.11.1999, in case No. 174-1 of 1998.

2. The facts in brief are that Smt. Nikki Devi on 7.8.1996 at about 6 a.m. was going to offer water to "Pippal" tree, accused Bhandaru Ram caught hold of her breast and tried to rape her, but she did not allow him to achieve his mission. He gave her severe beatings and torn her clothes in the scuffle. She cried, her children and daughter in law came to the spot and rescued her. She apprehended danger to her life. She submitted an application, dated 7.8.1996 Ex. PA to the Superintendent of Police, Bilaspur, on which an FIR No. 222 was registered on 7.8.1996 at Police Station, Sadar,

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Whether the reporters of the local papers may be allowed to see the Judgment?

under Sections 354, 506 IPC. The police recommended the case for cancellation, but the trial court summoned accused Bhandaru Ram and Satya Devi for the offences, under Sections 354, 323 and 506-II, IPC. Charge was framed against the accused, to which they pleaded not guilty. The prosecution examined four witnesses. The accused were examined under Section 313 of the Code of Criminal Procedure. The learned Chief Judicial Magistrate, acquitted both the accused, on 4.11.1999. The State has filed the appeal against the acquittal of both the accused-respondents.

3. I have heard the learned Additional Advocate General, Mr. Vikram Thakur, Advocate, appearing vice counsel for the respondents and gone through the record.

4. Smt. Nikki Devi appeared as PW 1 and has stated that when she was going to offer water to “Pippal” tree, accused Bhandaru Ram met her and he grappled with her. In the meantime, Mathura Devi and Birbal also came there. Accused Satya Devi was not there. She suffered injury as a result of grappling of accused with her. She had lodged a complaint Ex. PA with Superintendent of Police, Bilaspur. In cross-examination, she has stated that this scuffle continued for half an hour. Satya Devi did not give beatings to her. She was not medically examined.

5. PW 2 Asha Devi has stated that Nikki Devi is her mother in law and Birbal is her brother in law. She has stated that on hearing the cries of Nikki on 7.8.1996, she and Birbal went to the spot and saw that accused was beating her mother in law. They rescued her. She has stated that Satya Devi did not give any beatings. She has

also stated that Mathura Devi was first to reach there. Mathura Devi was not examined by the prosecution.

6. PW 4 Brij Lal Head Constable has stated that in the year 1996 he was posted at Thana Sadar as Investigating Officer. On 8.8.1996, he investigated the case and prepared the spot map Ex. PW 4/A and took into possession the torn shirt vide memo Ex. PB. The accused in their statements, under Section 313 Cr.P.C. have denied the prosecution case.

7. PW 1 Nikki Devi has not stated that accused had outraged her modesty. Her version is only to the effect that accused grappled with her. She has also not stated that accused Bhandaru Ram gave her beating. PW 2 Asha Devi has specifically stated that Satya Devi gave no beatings to PW 1 Smt. Nikki Devi. There is no medical evidence on record to show that any beating was given to Nikki Devi. There is no evidence of criminal intimidation and wrongful restraint. The complainant Smt. Nikki Devi has stated that accused Satya Devi was not present. Smt. Mathura Devi has not been examined, who according to PW 2 Asha Devi was first to reach the spot. The learned Chief Judicial Magistrate has appreciated the evidence on record properly and has rightly acquitted the accused. No interference is called for. Consequently, the appeal is dismissed.

August 21, 2007. **(Kuldip Singh)**
(*Hem*) **Judge.**